

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

DAVID TROY ECONOMIDES,
Defendant.

Case No. CR20-5388-RJB-001

DETENTION ORDER

THE COURT, having conducted a detention hearing pursuant to 18 U.S.C. Section 3142, finds that no condition or combination of conditions which defendant can meet will reasonably assure the safety of any other person or the community; nor are there conditions that would reasonably assure the defendant would be less likely to flee or fail to appear for court proceedings. The defendant is represented by Assistant Federal Defender Gregory Geist. The government is represented by Assistant United States Attorney Ye-Ting Woo.

The defendant is charged with four counts: (1) Attempted Possession of Methamphetamine with Intent to Distribute, (2) Possession of Methamphetamine with Intent to Distribute, (3) Possession of a Firearm in Furtherance of a Drug Trafficking crime, and (5) Felon in Possession of a Firearm. Indictment, Dkt. 1. The government filed a motion for detention (Dkts. 8, 16), and accompanying documents, (Dkt. 16-1, 16-2) alleging that the presumption of detention applies, and asserting that if released, Mr. Economides would pose a substantial risk of flight, risk of non-appearance, and risk of dangerousness to others and to the community.

The Court heard information and argument presented during the videoconference hearing on December 18, 2020, and information provided by the Pretrial Services Officer, Jamie Halvorson including the pretrial services reports (Dkts 7, 17).

The government met its burden of proving by a preponderance of the evidence

1 that the defendant presents a significant risk of flight, or failure to appear, based on the
2 defendant's history of repeated criminal conduct showing he has a pattern of not
3 conforming his behavior to the law, the circumstances of his attempt to flee at the time
4 of arrest, and a history of previous bench warrants issued by state courts for failure to
5 appear. Dkt. 16, Memorandum in Support of Motion for Detention, 16-1, 16-2; Dkt. 17,
6 Supplemental Pretrial Services Report at 3-6.

7 The Court also finds the government met its burden of proving by clear and
8 convincing evidence that the defendant presents a significant risk of danger to
9 others or to the community. The defendant's criminal history shows convictions
10 involving harmful physical conduct, including convictions for assault in the second
11 degree with a deadly weapon, robbery first degree with a deadly weapon, burglary
12 first degree with a deadly weapon, and kidnapping second degree. Dkt. 17 at 5.
13 The record shows that while on supervised release with the Clark County Superior
14 Court for these offenses, Mr. Economides committed another felony: Possession
15 with Intent to Deliver Methamphetamine. Dkt. 17 at 6. Mr. Economides also has a
16 prior conviction for domestic violence assault, and the record shows that he
17 violated the terms of his supervised release and was sanctioned by the Clark
18 county District Court with jail time for each of those violations. Dkt. 17 at 4.

19 The current charges, involving a drug crime with a maximum sentence of
20 10-years or more, trigger the rebuttable presumption of detention, that "no
21 condition or combination of conditions will reasonably assure the appearance of
22 the person as required and the safety of the community." 18 U.S.C. §§ 3142(e)(1).
23 The presumption operates to shift the burden of production to the defendant.
24 *United States v. Hir*, 517 F.3d 1081, 1086 (9th Cir. 2008). The prosecution has the

1 burden of persuasion. *Id.* If the defendant proffers evidence to rebut the statutory
2 presumption, this does not mean the presumption has been erased; it simply
3 means the presumption is an evidentiary finding that militates against release, and
4 is weighed along with the other factors identified in 18 U.S.C. § 3142(g). *United*
5 *States v. Hir*, 517 F.3d at 1086.

6 The four factors are: 1. Nature and seriousness of the charges; 2. Weight
7 of the evidence against the defendant; 3. History and characteristics of the
8 defendant; and 4. “Nature and seriousness of the danger to any person or the
9 community that would be posed by the person’s release.” 18 U.S.C. § 3142(g)(1)-
10 (4). The Bail Reform Act recognizes that release should be the normal course, and
11 “detention prior to trial or without trial is the carefully limited exception.” *United*
12 *States v. Salerno*, 481 U.S. 739, 755 (1987). In evaluating whether the defendant
13 poses a serious potential for dangerousness, it is not necessary for the
14 Government to produce, or for the Court to rely on, evidence of prior convictions
15 for violent crimes. *United States v. Hir*, 517 F.3d at 1091-92; *United States v.*
16 *Rodriguez*, 950 F.2d 85, 88-89 (2d Cir. 1991).

17
18 Even with conditions by which the defendant’s whereabouts could
19 potentially be monitored, the Court finds that there are no conditions of release
20 that would effectively mitigate the potential for failure to appear, flight to avoid
21 prosecution, or repeated behavior of committing new offenses while on supervised
22 release. And Mr. Economides’ criminal history shows that he has not demonstrated
23 law abiding behavior in the community. Some of these offenses for which he was
24 convicted in state and federal court were committed when he was on supervised
release for a prior conviction. See e.g., Dkt. 17 at 5-6 (felony offense committed

1 on 7-19-16 while on supervision for prior felony convictions; and felony offenses
2 committed on 3-26-2009 while on unsupervised probation for a prior misdemeanor
3 conviction).

4 Mr. Economides' criminal history, and the facts concerning his arrest,
5 convince the Court that his threat to the community continues and his behavior
6 cannot be successfully controlled by imposing structured supervision. The
7 government proffered documents showing that Mr. Economides fled the scene
8 when Clark County Sheriff's Officers attempted to arrest him on December 11,
9 2020. Dkt. 16-2 at 6-7. Mr. Economides drove over a curb, into a planter area, sped
10 into on-coming traffic going the wrong way down a divided road. Eventually the
11 defendant crashed the car, he was transported to the hospital for evaluation, but
12 apparently no other individuals were harmed during the crash. *Id.*

13
14 During the hearing, the defense and the Pretrial Services Office proposed that
15 Mr. Economides should be released -- for pretrial supervision, or for temporary release
16 until the COVID-19 outbreak at the Federal Detention Center subsides -- to the home
17 where his family is living (possibly with the defendant on home detention to include
18 location monitoring), or placement in a Residential Re-entry Center. The Court finds
19 neither of these options would be a viable release plan under the Bail Reform Act,
20 because the Court cannot effectively prevent the defendant from leaving these
21 locations. Even with electronic location monitoring, the defendant would potentially be
22 able to obtain contraband from others, he would be a flight risk, and would not be in a
23 locked facility – the Court finds that a locked facility is necessary to protect the
24 community.

The defendant also argued that he must be released because is concerned he

1 will be exposed to individuals with COVID-19 disease while he is detained at the
2 SeaTac Federal Detention Center (FDC). The Bail Reform Act provides that the Court
3 should give consideration for a defendant's "physical and mental health" in determining
4 release. In this case, the defendant stated that his body mass index (BMI) indicates
5 obesity, which may create increased susceptibility to contracting COVID-19, or that
6 would cause him, if he did contract the virus, to suffer more severe symptoms than
7 others who have the COVID-19 disease. He also asserted that he has asthma, and may
8 have a heart condition, and contends these conditions would be co-morbid conditions
9 with the COVID-19 virus.

10 The Court is aware that the impact of COVID-19 is changing; according to the
11 Bureau of Prisons' website, there have been reported cases of inmates and staff at the
12 Federal Detention Center at SeaTac, within the Bureau of Prisons ("BOP") system, who
13 have tested positive for the COVID-19 virus. See
14 <https://www.bop.gov/coronavirus/index.jsp>.) See *King v. County of Los Angeles*, 885
15 F.3d 548, 555 (9th Cir. 2018) ("To describe the conditions at Coalinga [State Hospital],
16 we take judicial notice of the undisputed and publicly available information displayed on
17 government websites.").

18 Yet, a person who is arrested and evaluated for release or detention under the
19 Bail Reform Act cannot reasonably rely on the argument that detention should be off the
20 table because there are individuals with COVID-19 positive test results at the FDC
21 SeaTac. As a practical matter, the fluctuating FDC COVID-19 rates – as they are also
22 fluctuating in the Western District of Washington community -- would be a fluctuating
23 factor based on testing data and statistics that are always changing, with plateaus,
24 peaks, and valleys. See generally,

<https://www.doh.wa.gov/Emergencies/COVID19/DataDashboard>

1 When the rates of infection in the detention facility are high, the defense is
2 apparently arguing that the infection rate overshadows all of the other Bail Reform Act
3 criteria, and essentially requires release during the pandemic for Mr. Economides, who
4 has conditions that may cause him to have a higher COVID-19 risk – he alleged that he
5 suffers from obesity, asthma, and a potential heart condition. This argument does not
6 persuade the Court; because the Section 3142(g) factors weigh heavily in favor of
7 detention based on the facts described above. *See generally, United States v.*
8 *Carmona*, No. 20cr00059-LAB, 2020 WL 2512199 (S.D. Cal. May 15, 2020) (“To be
9 sure, the prevalence of the COVID-19 virus outbreak in detention facilities informs the
10 balancing of relevant § 3142 release factors. But that single factor does not *control* the
11 release decision.”)

12 The Court finds: The government met its burden of proving by a preponderance
13 of the evidence that the defendant presents a significant risk of failure to appear. The
14 government also met its burden of proving by clear and convincing evidence that the
15 defendant presents a significant risk of danger to others and to the community, and
16 there are no condition or combination of conditions which defendant can meet that will
17 reasonably assure the safety of any other person and the community, or the
18 appearance of the defendant.

19 This finding is based on:

- 20 1) the nature and circumstances of the offense(s) charged,
21 2) the weight of the evidence against the person;
22 3) the history and characteristics of the person;
23 4) criminal history;
24 5) history of failure to appear; and circumstances of the defendant’s attempt to flee
during the arrest;

6) the nature and seriousness of the danger release would impose to any person or the community, including a history of repeated violent behavior and committing new offenses while on supervised release for prior convictions.

Order of Detention

< The defendant shall be committed to the custody of the Attorney General for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal.

< The defendant shall be afforded reasonable opportunity for private consultation with counsel.

< The defendant shall on order of a court of the United States or on request of an attorney for the Government, be delivered to a United States Marshal for the purpose of an appearance in connection with a court proceeding.

Dated this 22nd day of December 2020.



Theresa L. Fricke
United States Magistrate Judge